

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

WILLIE FRANK WADE §
VS. § CIVIL ACTION NO. 6:07cv500
SHERIFF OF GREGG COUNTY, TEXAS §

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Judith K. Guthrie. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case.

Petitioner filed objections to the Report. Petitioner contends that his petition should not be dismissed for failure to exhaust his state court remedies because he was held in jail while sick, not receiving his medicine, is stressed because he was in jail for no reason, and feels he deserves an apology.

Petitioner filed a habeas petition, which is the proper vehicle to seek release from custody. *See Carson v. Johnson*, 112 F.3d 818, 820 (5th Cir. 1997). In contrast, generally § 1983 suits are the proper vehicle to attack unconstitutional conditions of confinement and prison procedures. *Id.* The treatment a prisoner receives in prison or jail and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel and unusual punishment. *See Farmer v. Brennan*, 511 U.S. 825, 832 (1994). A writ of habeas corpus is an improper remedy for such claims. If Petitioner wants to raise these issues, he may file a civil rights suit under § 1983.

This Court made a *de novo* review of Petitioner's objections and determined that they lack

merit. This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

ORDERS, ADJUDGES, and DECREES that this action is **DISMISSED WITHOUT PREJUDICE**; and

ORDERS that all motions not previously ruled on are denied.

So ORDERED and SIGNED this 19th day of June, 2008.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE